

(2012) 01 CAL CK 0033
In the Calcutta High Court
Case No : Writ Petition No. 18988 (W) of 2006

Chunilal Nanda

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 13-01-2012

Acts Referred:

Constitution of India, 1950 — Article 12, 226

Citation : (2012) 1 CALLT 683 : (2012) 132 FLR 933

Hon'ble Judges : Nadira Patherya, J

Bench : Single Bench

Advocate : Subir Sanyal, Mr. Kamal Mishra and Mr. Tamal Taru Panda, for the Appellant; Probal Kr. Mukherjee, Mr. Dwijadas Chakraborty, for the Respondent Nos. 4 to 8 and Mr. Biswajit De, for the State, for the Respondent

Final Decision : Allowed

Judgement

Nadira Patherya, J.—By this writ petition the petitioner seeks to set aside the order of dismissal dated 21st June, 2006, so also the charge-sheet dated 1st July, 2005, the Enquiry Report dated 18th July, 2002 and the board resolution dated 20th July, 2006.

2. The case of the petitioner is that on the ground of misappropriation of sums proceedings were initiated against the petitioner and the petitioner put under suspension. Although enquiry was conducted no copy of the Enquiry Report was given to the petitioner, therefore, there has been violation of Rule 48(f) of the 1987 Rules. A writ petition was filed and during the pendency of the SLP before the Supreme Court of India from an order passed in contempt proceedings the Enquiry Report was submitted on 18th July, 2002 and the civil appeal and the SLP was disposed of with the direction that there would be no impediment for the bank to take action on the basis of the Enquiry Report. Although a copy of the Enquiry Report was given to the petitioner and representations made, for non-service of the show cause notice with regard to the proposed punishment there has been violation of Rule 48(f) of the 1987 Rules. For the said proposition

reliance is placed on AIR 1968 SC 294 and State of Uttaranchal and Others Vs. Kharak Singh, .

3. The charge-sheet also does not give the list of witnesses. The Presiding Officer himself was a witness and no opportunity of cross- examination was given to the petitioner, instead it was the Enquiry Officer who conducted the cross-examination. The documents relied on have not been proved and production of documents is not enough as held in Roop Singh Negi Vs. Punjab National Bank and Others, . From a reading of the Enquiry Report it will appear that in respect of each of the charges levelled a finding has been given by the Enquiry Officer and against each finding penalty proposed, this is beyond the jurisdiction of the Enquiry Officer and renders the Enquiry Report bad. The Presiding Officer cannot be a Judge and a witness as held in Arjun Chaubey Vs. Union of India (UOI) and Others, . From a reading of the order of dismissal it will appear that the legal measures recommended by the Enquiry Officer have been accepted and there is no independent finding. This evidences non-application of mind by the Board of Directors. No purpose will be served in filing an appeal and taking recourse to alternative remedy as the punishment has been imposed by the Board of Directors which is the appellate authority. There is no scope to make any further enquiry as the petitioner has retired. In fact, no punishment has been recommended in respect of charge-II which is the charge of misappropriation of funds and fraud. Reliance is placed on Bhagirathi Jena Vs. Board of Directors, O.S.F.C. and Others, , Rajinder Krishan Khanna and Others Vs. Union of India and Others, Page-35, for the proposition that on retirement the proceeding initiated against the delinquent lapses and need not be proceeded with. The Regulations also do not provide for continuance of enquiry, therefore, the retiral benefits be paid to the petitioner. For all the said reasons, therefore, the order of dismissal be set aside.

4. Opposing the said application on behalf of the Co-operative Bank Counsel submits that although it has been alleged by the petitioner that as the Enquiry Officer cross-examined the witnesses, therefore, the proceeding is bad. No complaint was made at any point of time regarding no opportunity being given to cross-examine. The Enquiry Report was submitted to the delinquent and a reply also given. In view of the existence of alternative remedy of appeal u/s 136 of the 1983 Act which is efficacious this application warrants no order. Reliance is placed on 1999 4 Supreme Today 765. The Appendix to Chapter-VI and Rule 15 in particular provides an appeal to the general body of the Cooperative Bank. In the order dated 12th December, 2006 the maintainability issue was kept open and in view of the existence of alternative remedy as held in 1997 3 SCC 73 and U.P. State Cooperative Land Development Bank Ltd. Vs. Chandra Bhan Dubey and Others, , this application warrants no order.

5. The principle of relation back will be applicable and therefore, in the event the order of dismissal is set aside the enquiry be proceeded from the stage where from the order is set aside. For the said proposition reliance is placed on 2006 12

SCC 404 and Chairman-Cum-M.D., Coal India Ltd. and Others Vs. Ananta Saha and Others, . In the peculiar circumstance of this case in the event the order of dismissal is set-aside the matter be remanded for consideration afresh from the stage of enquiry.

6. In reply counsel for the petitioner submits that in view of breach of Rule 48(f) recourse to alternative remedy is meaningless and is misconceived. 1997 3 SCC 73 is not a case of alternative remedy and U.P. State Cooperative Land Development Bank Ltd. Vs. Chandra Bhan Dubey and Others, is distinguishable on facts. In L.K. Verma Vs. H.M.T. Ltd. and Another, it has been held that alternative remedy is not an absolute bar. Therefore, the plea of alternative remedy taken is not tenable.

7. As regards the doctrine of relation back no rule exists whereby the delinquent is to get extension of service. Admittedly, the petitioner retired on 1st January, 2009. Chairman-Cum-M.D., Coal India Ltd. and Others Vs. Ananta Saha and Others, is distinguishable on facts. The affidavit was filed by the respondents in November, 2008 and from the above it is evident that the petitioner retired after the filing of the affidavit in opposition. Reliance is placed on Sarwan Kumar and Another Vs. Madan Lal Aggarwal, and Bindha Prasad and Others Vs. Bhan Datt (dead) by Lrs., and an unreported judgment delivered in MAT 830 of 2011. Therefore, reliefs as sought be granted.

8. Having considered the submission of the parties the charge-sheet was submitted to the petitioner for misappropriation of funds. An enquiry was made and such enquiry culminated in the Enquiry Report which was given to the petitioner during the pendency of the proceeding before the Supreme Court of India. In the light of filing of the Enquiry Report the civil appeals were dismissed and liberty given to the Co-operative Bank to take steps on the basis of the Enquiry Report. As an Enquiry Report was served on the petitioner and representation made, on consideration whereof the Co-operative Bank proposed to impose punishment on the petitioner. In doing so the respondent bank failed to give the second show-cause notice of the proposed punishment to the petitioner and imposed the punishment without giving him an opportunity of hearing, instead passed the order of dismissal on 21st July, 2006. From a reading of the order of dismissal dated 21st July, 2006 it appears that the reasons for dismissal are the legal measures recommended in the Enquiry Report. Therefore, undoubtedly there has been infraction of Rule 48(f) of the 1987 Rules which postulates show cause notice to be given to the delinquent at 2 different stages - (i) on receipt of the Enquiry Report and (ii) at the time of proposed punishment. It is the latter stage which has not been followed and renders the order of dismissal bad and liable to be set-aside.

9. Although the plea of alternative remedy has been taken, under Rule 15 of the Appendix to Chapter-VI an appeal lies to the Board of Directors from an order passed by the Chairman. From the Order of the Board of Directors the appeal will lie to the General Body.

10. The order of dismissal though passed by the Chairman the resolution to remove was adopted by the Board of Directors at its meeting held on 20th July, 2006, therefore, no purpose will be served by directing the petitioner to avail of the alternative remedy. In any event the existence of an alternative remedy is not a bar to exercise of discretion under Article 226 of the Constitution of India, especially when there has been an infraction of Rules as in this case, therefore, this writ petition is maintainable.

11. The proviso to Rule 48(f) of the 1987 Rules contemplates issuance of 2nd show-cause notice. As no 2nd show cause notice was served on the petitioner calling for his representation on the proposed punishment there has been violation of the principles of natural justice. No Rules to the contrary of the Co-operative Bank has also been placed before Court. Therefore, interference is warranted and the order of dismissal is set-aside.

12. Another reason for passing this order is that the Enquiry Officer in his report while giving his finding has recommended the penalty and in doing so has exceeded his jurisdiction as held in State of Uttaranchal and Others Vs. Kharak Singh, and has rendered the order of dismissal bad. The Board of Directors of the respondent Co-operative Bank have accepted the recommendation of the Enquiry Officer without independently applying its mind before taking a decision to dismiss the petitioner. For non application of mind, the order of dismissal is vitiated.

13. In a normal situation where the delinquent continued to be in service of the Co-operative Bank the enquiry would be allowed to be continued from the stage, the order was set-aside, but in this case the petitioner has retired during the pendency of the writ petition, therefore, the principle of relation back will not be applicable as held in Bhagirathi Jena Vs. Board of Directors, O.S.F.C. and Others,

14. No Rules have been placed by the respondent whereby the employee is given an extension in service till disposal of the proceeding. Therefore, the doctrine of relation back is not applicable in the instant case nor the cases in respect thereof.

15. Indian Oil Corporation Ltd. and another Vs. Ashok Kumar Arora, cited by the respondent is not a case of alternative remedy but recognizes the jurisdiction of the High Court to interfere if the domestic enquiry is vitiated by the recognized principles of non-observance of the principles of natural justice.

16. In U.P. State Cooperative Land Development Bank Ltd. Vs. Chandra Bhan Dubey and Others, the issue raised was whether the appellant therein was an authority under Article 12 of the Constitution of India and while considering the said issue, a reference was made to alternative remedy and its application. The said issue of alternative remedy is not an absolute bar, therefore, the decision cited is distinguishable on facts.

17. Accordingly, the Co-operative Bank is directed to pay the petitioner the retiral benefits to the petitioner within 8 weeks from the date of receipt of this order.

The petitioner will also be entitled to the back wages on and from the stage prior to the Enquiry Report as the Enquiry Report has been set-aside. In view of the aforesaid, this application is allowed.